<u>**Actuarials**</u>
Offered by Commissioners Dr. Laurie Guidry; Dr. Robert Kinscherff; Dr. Ray Knight; Larni Levy, Esq. and Joined by Commissioner Maureen Gallagher

In 1999, the Massachusetts legislature created the current criteria (SORB's Risk Factors) and its process for classification. These criteria were established in response to Massachusetts Supreme Court decisions finding that due process under the Massachusetts constitution requires an individualized rather than an offense based process for classifying levels of risk for sex offenders.[1] These criteria were established 17 years ago based upon what was known about best practices for the assessment of adult male sex offenders. Based upon this mandate, the SORB created the MA Classification Factors assessment strategy and provided guidelines for decision-making (i.e., factors in SORB's regulations).

Over the last two decades there have been significant advancements in the strategies implemented to create and assess risk instruments for sexual aggression. In fact, "the criminal justice community [ ] has recognized that crime control efforts, prevention strategies, and treatment methods based on scientific evidence are far more likely to be effective and cost-beneficial."[2] Since these criteria were established, however, the Massachusetts criteria have never been empirically tested. Therefore, the reliability and predictive validity of the instrument and its application have never been fully established. Furthermore, the SORB does not provide rules on how to combine or weigh items in reaching a decision, and individual "factors" neither have specific quantitative anchors nor provide clear cutoffs for presence or absence of the risk factors. It relies on individuals (e.g., evaluators, SORB board members or hearing examiners) to use their discretion to determine the presence or absence of factors and then to subjectively weigh factors individually and cumulatively in arriving at their risk judgment. This is known as Structured Clinical Judgment (SCJ). Although better than risk assessments that are not anchored to empirically-based factors, an SCJ classification strategy is vulnerable to distortions of clinical judgment, has difficulties achieving adequate levels of interrater reliability, and has been consistently shown to have predictive validity that is inferior to empirical actuarials.[3] It is essential that the reliability and validity of the MA Classification Factors as well as the process to weigh these factors be tested empirically, as has been done in other states,[4] and modified if found unreliable or invalid.

Given the Commission's mandate to determine "the most reliable protocols for assessing and managing risk of recidivism of sex offenders" the current SCJ process does not appear to meet this threshold. The chart below depicts the predictive value of various risk assessment processes, and indicates that an offense based system, such as the Adam Walsh Act (AWA crime), is literally no better than a roll of the dice, whereas an empirical actuarial tool combined

with standardized assessment that combines both static and dynamic factors (Em. Act. + Dyn.) is the most reliably predictive system.[5]   The scale in the chart is an ordinal one, representing the order of significant differences among assessment procedures, but not the magnitude of these differences. SORB's current classification process would fall on the low end of the predictive validity chart, slightly more predictive than unstructured clinical judgment.[6] Empirically validated, mechanical, and quantitative procedures (procedures that compile scores for individual items into a final total) are currently available and offer the most accurate risk assessment strategies. [7]
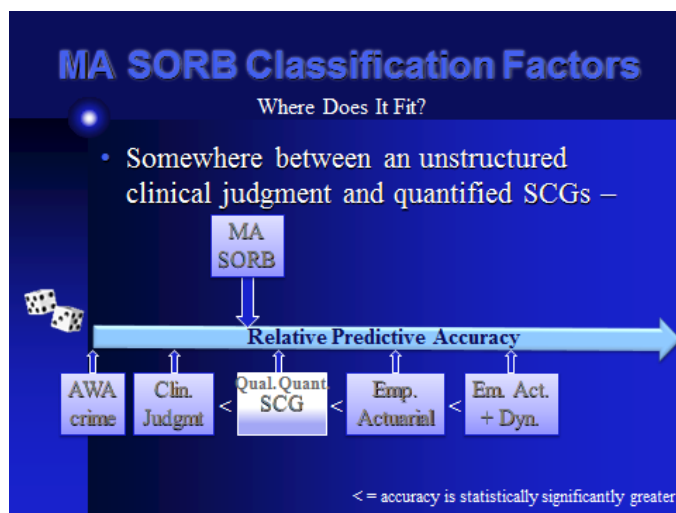
        i.   SORB Classification Factors

SORB's enabling statute was established 17 years ago and was based upon what was known about risk factors for sexually abusive behaviors. Although current research supports the predictive validity of many of the domains that the factors attempt to assess, this research also indicates that the existing regulations contain factors that have proven to be poor predictors of recidivism[8]. Among those factors are:

- Released from civil commitment vs. not committed[9]
- Maximum term of incarceration[10]
- Documentation from a licensed mental health professional specifically indicating whether an offender poses a risk to reoffend based on clinical judgment[11]
- Recent behavior while incarcerated[12]

- Recent threats[13]
- Victim impact statement[14]

Although the victim impact statement may not be a predictor of recidivism, we fully recognize its role in sentencing and in notification decisions.

> **The Commissioners joining this statement recommend replacing the portions of SORB's enabling statute, G.L. c.6, §178K(1)(a-l), that require consideration of certain enumerated factors, with a more general requirement to use research-based best practices in classification determinations.**

In sum, we recognize that the SORB's Classification Factors assessment strategy must respond to the criteria established by the enabling legislation, but it does not take advantage of the superior reliability and predictive validity of empirically derived actuarials. SORB also relies on a "guided" clinical judgment model to arrive at a final risk judgment, whereas other strategies have been shown to yield superior predictive accuracy.[15] Moreover, the SORB process cannot be determined to be either reliable or valid, until a process is put into place to ensure that it is empirically tested.

     ii.   Are Accurate Classifications Possible?

Accurate classification of sex offenders is one significant strategy to ensure public safety and the efficient and effective management of sex offenders in the state.

There is precedent in Massachusetts for actuarial approaches. The Department of Probation currently uses actuarial assessments and evidence based best practices as a means to identify and separate those requiring more intensive supervision from those requiring less supervision. As such, probation implements a validated, sex offender specific risk/needs assessment to supplement the general risk/needs assessment[16] that is already being used by probation offices across the state. In addition, probation seeks to develop and implement supervisory protocols that identify specific individualized treatment and management targets grounded in evidence-based practices.[17]

Follow up studies are needed to determine whether the assessment systems employed by state agencies, such as the MA SORB's classification regime, are effective. The Supreme Judicial Court notes that "it is troubling that little emphasis has apparently been placed by SORB on assessing the accuracy of its classifications. This is especially true given the enormity of the

consequences of such classification decisions." [18] Massachusetts should follow the lead of other states (e.g., Minnesota, New York, New Jersey, Washington State, South Carolina and Florida) that have studied the effectiveness and reliability of their systems.[19]

This assessment of the SORB current classification system could be carried out in a timely, but empirically effective, scientifically valid way employing a retrospective strategy that uses trained evaluators to code a selective sample of the 11,000 offenders classified over the last two decades on the SORB's newly proposed 40 factors and following them until the present. Greater details about such a strategy and how it can address criticisms of the need to assess a broader conceptualization of "dangerousness" have been proffered in documents previously submitted to the Commission.

> **The Commissioners joining this statement believe that a predictively valid sex offender classification process will enhance public safety.**

   iii.   Conclusion

Accurate and current classifications are advisable both because they advance the safety of the community[20] and are required to satisfy constitutional due process. [21] "[T]he State [ ] has 'an interest in ensuring that its classification and notification system is both fair and accurate.'……[It] has no interest in making erroneous classifications and implementing overbroad registration and notifications."[22] Overclassification "both distracts the public's attention from those offenders who pose a real risk of reoffense, and strains law enforcement resources." [23]

The Commissioners joining this statement conclude that best practices to arrive at current classification levels, as recognized in the scientific community, should be added to the SORB classification process. Empirically based best practices for adult male offenders would involve the use of actuarials that provide an objective assessment of risk based on static and dynamic factors. Furthermore, the Commissioners joining this statement recognize the need for using different criteria and different assessment tools for juveniles, females and other special populations   "A more reasoned approach[24] [ ] to sex offender policies [ ] would utilize empirically derived risk assessment tools to create classification systems that apply more aggressive monitoring and tighter restrictions to those who pose the greatest threat to public safety. In this way, a more cost-effective allocation of fiscal and personnel resources could be

achieved."[25] "Most sex offenders will ultimately be returned to the community, and when they are, it behooves us to facilitate a reintegrative approach that relies on empirical research to inform community protection strategies."[26]

<u>**Assessment and Disposition of Special Populations**</u>
Offered by Commissioners Dr. Laurie Guidry; Dr. Robert Kinscherff; Dr. Ray Knight; Larni Levy, Esq. and Joined by Commissioners William Brownsberger and Maureen Gallagher

Part of the Commission's mandate is to develop "the most reliable protocols for assessing and managing risk of recidivism of sex offenders" in Massachusetts including "special assessment protocols for juveniles, female offenders and persons with developmental, intellectual, psychiatric and other disabilities." Best practices recognize the importance of creating empirically based assessment methods, including those specifically designed for special populations such as juveniles, females, and individuals with developmental, cognitive, and psychiatric impairments.

       i.   Juveniles

Juveniles are developmentally different from adults and require special consideration.[27] In the past ten years substantial research has focused on the developing adolescent brain and the social, academic, and developmental impact that registration has had on this special population. The courts continually recognize the "distinctive attributes of youth."[28] Factors that distinguish youth such as "immaturity, impetuosity, and failure to appreciate risks and consequences" [29] are associated with the developing brain. This explains, in part, why sexual recidivism rates for juveniles are so low and juveniles' response to treatment is so strong.[30] SORB's revised regulations recognize that "[a]dolescence is a time of rapid social, sexual, physical, cognitive and emotional developmental changes."[31]

As a group, juveniles who engage in sexually abusive behaviors evidence substantially lower risks for sexual recidivism than adults, with rates of 4.3% to 6.8% as compared to 13.7%.[32] Juveniles reoffend at much lower rates because the factors that contribute to sexually abusive behavior by juveniles normally disappear as they mature into late adolescence and early young adulthood, and are readily ameliorated by effective treatment.[33]

Many of the factors that lead to juvenile offending are common to all juveniles, regardless of behavioral problems. "[S]ome of the issues that [therapists] pathologize in adolescents who enter [sex offender] treatment also exist, to a greater or lesser degree, in most adolescents and may diminish or resolve without significant therapeutic intervention."[34] Because adolescence is a time of rapid social, sexual, physical, cognitive, and emotional development, "juveniles, 'as far as practicable…shall be treated, not as criminals, but as children in need of aid, encouragement and guidance.'"[35]

The Commissioners joining this statement recognize the research finding that placing youth on the internet for public notification of their sex offenses may have the unintended consequence of actually increasing the likelihood of delinquent behavior. [36] Furthermore, the Commissioners joining this statement recognize the new proposed guideline established by the Department of Justice SMART Office that acknowledges the differences between adolescents and adults. Youth publicly identified as "sex offenders" are often alienated from their peers, family and support networks and have difficulty staying in school and securing employment. (See footnote 64). Current research documents the deleterious effects of registration on a young person's social, emotional, and intellectual development, and the responsiveness of youth to treatment. While the Commissioners joining this statement recognize that there is a very small percentage of adolescents who are highly concerning, it is time to question whether public safety in Massachusetts is served by the registration and public dissemination of information on juveniles.[37] Currently, approximately twenty-three other states do not allow for children or adolescents adjudicated delinquent in juvenile court to be a part of public disclosure of their private information, [38] and eleven states that do not require these juveniles to register.[39] Massachusetts currently has a process by which there is a presumption that youth adjudicated must register with SORB unless this obligation is waived by the Juvenile Court. The Commissioners joining this statement recommend changing the process in Massachusetts towards a process in which the assumption is that all youth are free of any obligation to register unless -- following adjudication on a sexual offense and a registration hearing requested by the prosecution -- a Juvenile Court Judge makes the decision to impose an obligation to register upon a juvenile who is found to pose a substantial risk of sexual re-offense by clear and convincing evidence.

To the extent that youth are required to register, the Commissioners joining this statement recommend that risk assessments and classification procedures incorporate research-based best practices specific to juveniles. The assessment and classification process should be separate from that used for adults and not a simple an exemption for certain factors. In addition, research has shown that the risk and protective factors for juveniles are not the same as those for adults. For example, many of the static risk factors in adult are still dynamic risk factors for adolescents, meaning that these can be changed. Therefore, the factors established by legislation 17 years ago, which were targeting adult males, may not be applicable to the assessment of adolescent boys and girls. When a juvenile (or an adult who was convicted for a juvenile offense) is assessed, different factors as well as different risk assessment tools designed for use with adolescents should be utilized.

       ii.   *Females*

Like juveniles, females have extremely low recidivism rates that are not reflected in the general recidivism data based on studies of adult male populations. Females comprise only 5 percent of those who sexually offend, and they recidivate at the low rates of 1 to 3 percent.[40] Extant research findings on female sexual offenders "provide clear evidence that female sexual offenders, once they have been detected and sanctioned by the criminal justice system, tend not to reengage in sexually offending behavior. Most female sexual offenders are not convicted of new crimes, and of those who are, they are 10 times more likely to be reconvicted for a nonsexual crime than a sexual crime."[41] Recent court decisions as well as research studies of female offenders highlight the necessity to examine females as a distinct group for the purpose of risk assessment.[42] The significant differences noted in research recognize those factors that reflect gender-specific vulnerabilities and propensities associated with risk among female offenders, as well as identifying those factors that are shared between male and female offenders but which manifest differently in women.[43] The best practice consensus in the field indicates that because of these differences (e.g., differences in female offense processes[44] and their gender-specific cognitions[45] regarding offending behavior), female sex offenders should not be assessed by employing male sex offender generated risk factors and decision procedures. Additionally, female sex offenders differ among themselves in important ways that should be taken into account when assessing risk for sexual re-offense. For instance, women who promote prostitution differ from those who engage in contact sexual offenses,[46] as are females who commit sexual offenses in partnership with male offenders distinct from those who offend alone.[47] The Commissioners joining this statement recognize that females require assessment practices that differ from males and attend to the gender-specific and within-group differences identified to date.

       iii.   Other special populations

Similarly, determining the recidivism risk for individuals suffering from mental illness, developmental disabilities, and/or acquired brain injuries requires specialized assessment based on scientific research that takes these issues into account. Sexual offenders who present with co-occurring significant disabilities often present with a complex constellation of issues, both individual and systemic, that impact their risk potential.[48] Best practices with these special populations dictate that professionals working with them, even those with experience evaluating and treating non-disabled sex offenders, receive additional training and recognize

the limits of their knowledge.[49] Research on these special populations highlights more than the obvious differences between them, and sex offenders without substantive disabilities. For instance, although current research indicates that "(i)t is reasonable to expect the STATIC instrument to predict sexual…recidivism in a forensic (major mentally ill) population…",[50] it is equally important to identify and take in to account meaningful psychological factors specific to those sex offenders who are diagnosed with a severe and persisting mental disorder to most accurately identify the level of risk with which they present.[51] Similarly, research on individuals with intellectual developmental disorders emphasizes the critical importance of identifying both individual as well as contextual or environmental factors in assessments of risk for sexual re-offense in this and other disabled sexual offending populations.   The overwhelming consensus is that sexual offenders with co-occurring major mental illness, intellectual developmental disorder, and/ or acquired brain injury require a comprehensive and individualized approach to the assessment of their risk for sexual re-offense.

> **The Commissioners joining this statement recommend that SORB's regulations include research-based best practices for assessing risk levels for juveniles, females, and special needs populations that require differential empirical attention because of their distinct characteristics and needs.**

iv.   Conclusion

Juveniles, females, and individuals suffering from mental illness, developmental disabilities, and acquired brain injuries are special populations that require differential assessment strategies and dispositional decisions because of their marked empirical differentiation from adult male offenders. The consequences of the developmental stage of juveniles, the low recidivism rates of juveniles and females, and the substantially different psychological needs of disabled populations demand assessment procedures and dispositional strategies that address their unique characteristics and maximize their management and reintegration into society.

<u>**Data Collection**</u>
Offered by Commissioners Dr. Laurie Guidry; Dr. Robert Kinscherff; Dr. Ray Knight; Larni Levy, Esq. and Joined by Commissioner Gallagher

The Supreme Judicial Court notes that "it is troubling that little emphasis has apparently been placed by SORB on assessing the accuracy of its classifications. This is especially true given the enormity of the consequences of such classification decisions."[52] Other states such as Minnesota, New York, New Jersey, Washington State, South Carolina and Florida have successfully studied the effectiveness and reliability of their systems. [53] [54] [55]   Similar follow up studies are needed in Massachusetts to determine whether the assessment systems employed by state agencies, such as the MA SORB's classification regime, are effective.

The collection of data serves to assess an agency's reliability, effectiveness and impact.   To evaluate effectively the accuracy of the SORB's classification system as discussed in this report, data must be collected. Ideally, data would be collected to allow for the analysis and quantification of individual factors, so that their relevance and the reliability of their ratings can be evaluated. Minimally, data collection should keep track of trends, disparate impact of classifications, and recidivism. To allow maximum transparency and enhance empirical investigation, de-identified data sets with the algorithms that were used to generate measures and the details of the sources of measures should be made available for public examination.

> **The Commissioners joining this statement recommend that SORB submit an annual report and that the data used to generate this report be made available to the public upon request.**

This assessment of the SORB current classification system could be carried out in a timely, but empirically effective, scientifically valid way employing a retrospective strategy that uses trained evaluators to code a selective sample of the 11,000 offenders classified over the last two decades on the SORB's newly proposed 40 factors and following them until the present. Greater details about such a strategy and how it can address criticisms of the need to assess a broader conceptualization of "dangerousness" have been proffered in documents previously submitted to the Commission. Because the SORB has neither the resources to gather and process such data, nor the expertise to apply state of the art statistics to analyze such data, resources should be allocated for an independent research group to conduct this initial study, working with the SORB to assure congruence of ratings with SORB practices.

The first report shall include data from the previous five calendar years, broken down by year, after which the annual report will include data from only the preceding calendar year. The initial report can only include global final level decisions, but subsequent reports should include item and total score information. All data and a description of the methods relied upon in generating this report shall be contained in the report or, alternatively, made available to the public upon request.

The following data should be reported on an annualized basis:

1. Number of Registrants on registry as of date of report

    a. Number of individuals on registry as of the date of the report, broken down by Level 1, Level 2 and Level 3.

2. Final classifications by level

    a. Number of individuals finally classified by the SORB during the calendar year as not required to register, finally classified as Level 1, finally classified as Level 2, and finally classified as Level 3, broken down for each level by adult males, females and juveniles (at the time of adjudication) and those identified as being served by DMH and DDS. Juveniles are defined as individuals whose sex offense(s) occurred when under the age of 18.

3. Differences between recommended and final classifications

    a. Number of Level 1, Level 2 and Level 3 recommended classifications per year with number that were increased in final classification, number decreased in final classification and number that remained the same, broken down by the number of individuals at each recommended level whose classifications were raised to Level 3, raised to Level 2, lowered to a Level 2, lowered to Level 1, lowered to not required to register and remained the same.

4. Remands

    a. Number of cases remanded to SORB from the Superior Court or Appellate Courts, broken down by classification level before remand and classification level after remand to include number of individuals whose classifications increased to Level 3, increased to Level 2, decreased to Level 2, decreased to Level 1, were not required to register, and remained the same.

5. Reclassification

    a. Reductions: Number of registrants who sought to reduce their classification levels claiming a diminished risk of re-offense and danger to the public pursuant to 803 CMR 1.37C, broken down by classification level before request for reduction and final classification level of those individuals after request for reduction was considered.

    b. Increases:

        i. Number of petitions initiated by SORB for any reason to increase a registrant's classification level, broken down by classification level before the request to increase and final classification level for those individuals after request to increase became final.

        ii. Number of petitions initiated by SORB to increase a registrant's classification level because of a new sex offense arrest or conviction, broken down by arrests and convictions.

6. Recidivism

    a. Number of individuals classified as Level 1, Level 2 and Level 3 who were convicted of a new sex offense within five years of the final classification, broken down by classification level.

    b. Number of individuals classified as Level 1, Level 2 and Level 3 who were convicted of a new sex offense within ten years of the final classification, broken down by classification level.

    c. In all subsequent years after the quantification of the factors has been completed—the correlation and AUCs of the total scores and individual item scores with recidivism; the reliabilities of total scores and individual item scores; and a covariation matrix of all items and the total scores.

    a. *Other Agencies*

Most governmental agencies would benefit from improved data collection. With effective data collection, agencies can more accurately and easily report on progress and improvements.

Probation, for example, has reported success (1% sexual recidivism in Dudley District Court program, following 115 probationers over past ten years and 3% sexual recidivism in Worcester Superior Court program, following 63 probationers over past three years) in some of its regional specialized programs supervising sex offenders using evidence based supervisory models. In its presentation to the Commission, parole indicated the success of its specialized sex offender monitoring program, IPSO (intensive parole for sex offenders), but lacks supporting data. It would be helpful for other agencies and the public to know the statistical, rather than anecdotal, success of programs that reduce recidivism and how this is achieved, as well as programs that may be less effective.[56] [check and add cite? – I will search if someone else does not have a ready citation]

Endnotes

[1] See *Doe v. Attorney General*, 426 Mass. 136 (1997); *Doe No. 972 v. SORB*, 428 Mass. 90 (1998).

[2] Sex Offender Management Assessment and Planning Initiative, *DOJ Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking* (October 2014).

[3] Hanson, R. K., & Morton-Bourgon, K. E. (2009). The accuracy of recidivism risk assessments for sexual offenders: A meta-analysis of 118 prediction studies. *Psychological Assessment*, *21*, 1-21.; Grove et al., (2000), Clinical Versus Mechanical Prediction: A Meta-Analysis. *Psychological Assessment*, 12(1), 19-30.

[4] Zgoba, et al, *A Multi-State Recidivism Study Using Static-99R and Static-2002 Risk Scores and Tier Guidelines from the Adam Walsh Act*, NCJRS, United States Department of Justice pp. 8-10 (2012).

[5] *Id.; Risk Evaluation: Maximizing Risk Accuracy, MATSA and MASOC Presentation to SORB;* Special Commission Briefing Book Created by MATSA and MASOC, September 11, 2014, *citing*, Hanson, R.K. & Morton-Bourgon K.E., *The accuracy of recidivism risk assessments for sexual offenders: A meta-analysis of 118 prediction studies*. *Psychological Assessment*, *21*, 1-21 and Grove et al., (2000), Clinical Versus Mechanical Prediction: A Meta-Analysis. *Psychological Assessment*, 12(1), 19-30.

[6] Presentation by Ray Knight, Ph.D. to the Commission on Sex Offender Recidivism, October 8, 2014

[7] Hanson, R. K., & Morton-Bourgon, K. E. (2009). The accuracy of recidivism risk assessments for sexual offenders: A meta-analysis of 118 prediction studies. *Psychological Assessment, 21*, 1-21.

[8] Presentation by Ray Knight, Ph.D. to the Commission on Sex Offender Recidivism, October 8, 2014; *Risk Evaluation: Maximizing Risk Accuracy, MATSA and MASOC Presentation to SORB;* Special Commission Briefing Book Created by MATSA and MASOC, September 11, 2014.

[9] 803 CMR 1.33(5); (Knight & Thornton, 2007)

[10] 803 CMR 1.33(6)

[11] 803 CMR 1.33(35)

[12] 803 CMR 1.33(12)

[13] 803 CMR 1.33(14)

[14] 803 CMR 1.33(38)

[15] Presentation by Ray Knight, Ph.D. to the Commission on Sex Offender Recidivism, October 8, 2014; *Risk Evaluation: Maximizing Risk Accuracy, MATSA and MASOC Presentation to SORB;* Special Commission Briefing Book Created by MATSA and MASOC, September 11, 2014 citing (Hanson& Morton-Bourgon, 2009) and Grove et al., (2000), Clinical Versus Mechanical Prediction: A Meta-Analysis. *Psychological Assessment*, 12(1), 19-30.

[16] The Ohio Risk Assessment System-Community Supervision Tool (ORAS-CST)

[17] See Probation Statement attached to Commission reports.

[18] *Doe No. 380316 v. SORB,* 473 Mass 297, 321, n. 21 (2015).

[19] See note5, *supra.*

[20] *Doe No. 7083 v. SORB,* 472 Mass. 475, 484 (2015)

[21] *Doe No. 972 v. SORB*, 428 Mass. 90, 100 (1998); *Doe v. Attorney General*, 426 Mass. 136, 143-144 (1997)

[22] *Doe No. 972 v. SORB*, 428 Mass. 90, 107 (1998) (Marshall, J, concurring in part and dissenting in part).

[23] *Doe No. 380316 v. SORB,* 473 Mass. 297, 313-314 (2015).

[24] Tabachnick, J. & Klein, A. (2011), A Reasoned Approach: Reshaping Sex Offender Policy to Prevent Child Sexual Abuse. *Association for the Treatment of Sexual Abusers,* 1-50.

[25] Evidence-based Recommendations for Florida's Sex Offender Registry System, p.5, drafted by Jill Levenson, Ph.D. and approved by Florida Association for the Treatment of Sexual Abusers (October 2015) (copy attached).

[26] See n. 82.

[27] See generally *Miller v. Alabama*, 132 S. Ct. 2455, 2464-65 (2012); *Diatchenko v. District Attorney for the Suffolk Dist.*, 466 Mass. 655 (2013); *Brief of Amicus Curiae, American Medical Association*, *et al.,* in *Roper v. Simmons*, 543 U.S. 551 (2005).

[28] *Diatchenko v. District Attorney for the Suffolk Dist.*, 466 Mass. 655, 663 (2013). *See also Commonwealth v. Hanson H.,* 464 Mass. 807 (2013) *Commonwealth v. Humberto H.*, 466 Mass. 562, 575-76 (2013); *Commonwealth v. Walczak*, 463 Mass. 808, 811 (2012) (Lenk, J. concurring); *Commonwealth v. Magnus M.*, 461 Mass. 459, 461 (2012).

[29] *Diatchenko v. District Attorney for the Suffolk Dist.*, 466 Mass. 655, 675 (2013) (Lenk, J. concurring).

[30] Research indicates that juvenile offenders may be more amenable to treatment. 803 CMR 1.33(c) (SORB regulations).

[31] 803 CMR 1.33(29)(c).

[32] *Raised on the Registry: The Irreparable Harm of Placing Children on Sex Offender Registries in the U.S.*, Human Rights Watch, pp. 30-31 (2013); Caldwell, M.F. *Study Characteristics and Recidivism Base Rates in Juvenile Sex Offender Recidivism,* International Journal of Offender Therapy and Comparative Criminology, 54(2), 197-212 (2010); Letourneau, E.J., et al., "The Influence of Sex Offender Registration on Juvenile Sexual Recidivism," Criminal Justice Policy Review, 20(2),, 136-153 (2009) (less than 3% sex offense reconviction rate after 9 years); Caldwell,

M., *Sexual Offense Adjudication and Sexual Recidivism Among Juvenile Offenders*, Sexual Abuse: A Journal of Research and Treatment, 19, pp. 107-113 (2007)(6.8% new sex charges in 5 year follow-up of 249 juveniles); Vandiver, D.M., *A Prospective Analysis of Juvenile Male Sex Offenders*, Journal of Interpersonal Violence, vol. 21, no. 5, 673-688 (2006) (13 of 300 rearrested for sex offense in 3-6 years following adulthood); Hanson, K. and Morton-Bourgon, K, *Predictors of Sexual Recidivism: An Updated Meta-Analysis* (2004); Zimring, "The Predictive Power of Juvenile Sex Offending: Evidence from the Second Philadelphia Birth Cohort Study" (2006). See also Kinscherff, Robert Ph.D., Report to Commission (October 22, 2014) (85% to 95% of juveniles have no prior or subsequent arrests for sexual offending.)

[33] Despite these low rates and the research that has shown registration's lack of deterrent value for juveniles, juveniles in Massachusetts remain subject to registration and the deleterious effects of public disclosure. See Letourneau, et. al., *Expensive, Harmful Policies that Don't Work or How Juvenile Sex Offending is addressed in the U.S.*, International Journal of Behavior Consultation and Therapy, 2013, v. 8, No. 3-4, p. 26; *Raised on the Registry, The Irreparable Harm of Placing Children on Sex Offender Registries in the U.S.*, Human Rights Watch (May 2013) (documenting harmful effects of registration on children including, but not limited to, physical attack, homelessness, and lack of educational and employment opportunities).

[34] Creeden, K., *Taking a Developmental Approach To Treating Juvenile Sexual Behavior Problems*, International Journal of Behavioral Consultation and Therapy, 2013, Vo. 8 No. 3-4, pg. 12; *see* Pratt, R., *A Community Treatment Model for Adolescents Who Sexually Harm*, International Journal of Behavioral Consultation and Therapy, 2013, V. 8 No. 3-4, pg. 38.

[35] *Commonwealth v. Humberto H.*, 466 Mass. 562, 575-576 (2013)(citations omitted). See the recent revision to SORB's regulations at 803 CMR 1.33(29(c): "Adolescence is a time of rapid social, sexual, physical, cognitive and emotional developmental changes."

[3636]"The Negative Impact of Registries on Youth: Why are Youth Different Than Adults?" *Justice Policy Institute* (September 2, 2008).

[37] A youth "subject to sex-offender notification will have his entire life evaluated through the prism of his juvenile adjudication…It will define his adult life before it has a chance to truly begin." *In Re C.P.*, 967 N.E. 2d 729, 742 (Ohio 2012).

[38] "Beitsch, R., "States Slowly Scale Back Juvenile Sex Offender Registries," Pew Charitable Trust, available online at http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2015/11/19/states-slowly-scale-back-juvenile-sex-offender-registries.

[39] "Raised on the Registry: The Irreparable Harm of Placing Children on Sex Offender Registries in the U.S., *Human Rights Watch,* p. 18.

[40] Cortoni, F. & Hanson, K., "The Recidivism Rates of Female Sexual Offenders are Low: A Meta-Analysis," *Sex Abuse: A Journal of Research and Treatment*, v. 22, p.387 (2010); Cortoni, F. & Hanson, K., "Review of the Recidivism Rates of Adult Female Sexual Offenses," *Correctional Service of Canada*, May 2005 (http://www.csc-scc.gc.ca/research/r169-eng.shtml)

[41] Cortoni & Hanson at p. 396 (2010).

[42] 803 CMR 1.33 "The Board recognizes that adult female sex offenders generally have lower recidivism rates than adult male sex offenders. *Cortoni, et al., 2010.* The Board shall apply mitigating weight to the lower recidivism rate, along with the other relevant regulatory factors, in determining the final classification level.

[43] deVogel, V., & deVries Robbe, M. vanKalmthout, W. & Place, C. (2014) FAM Additional guidelines to the HCR-20V3 for assessing risk for violence in women. Van Der Hoeven Kliniek.

[44] Gannon, et al "Women Who Sexually Offend Display Three Main Offense Styles: A Reexamination of the Descriptive Model of Female Sexual Offending." *Sexual Abuse: A Journal of Research and Treatment* 26(3):207-214 (2013).

[45] Gannon, et al "A Descriptive Offense Process Model for female sex offenders appearing in B. Schwartz, (Ed), *The Sex Offender* Vo. 7, pp. 16-1-16.21 (2012) Kingston, NJ: Civic Research

[46] Cortoni, Sandler and Freeman, "Women Convicted of Promoting Prostitution of a Minor are Different from Women Convicted of Traditional Sexual Offenses: A Brief Research Report" (2014). *Sexual Abuse: A Journal of Research and Treatment* 1-11.

[47] Gillespie et al., "Characteristics of Females Who Sexually Offend: A comparison of Solo and Co-Offenders (2015). *Sexual Abuse: A Journal of Research and Treatment* 27(3) 284-301.

[48] Guidry, L .L. & Saleh, F. M. (2004). "Clinical considerations of paraphilic sex offenders with co-morbid psychiatric conditions." *Sexual Addiction & Compulsivity Journal*, 11 (1-2), 21-34.

[49] ATSA Adult Practice Guidelines, p.4 (2014)

[50] Kelley, S.M. & Thornton, D. "Can Current assessment tools accurately predict risk among sex offenders with major mental illness? A review of recent research findings." *Annual MASOC/MATSA Conference, Marlborough, MA* (2013)

[51] Kelley, S.M. & Thornton, D. "Sex offenders with major mental illness: Integrating research into best practices." *Journal of Aggression, Conflict, and Peace Research, 7*(4), 258-274; Guidry, L. (2015, October); "Can existing risk measures be used with SOMMI?" In D. Thornton (Chair), *Criminogenic needs of sex offenders with major mental illness (SOMMI)*. Symposium conducted at the 34th Annual ATSA Research and Treatment Conference, Montreal, Quebec (2015).

[52] *Doe No. 380316 v. SORB,* 473 Mass. 297, 312 n.21 (December 11, 2015), *see* Tewksbury, R., Jennings, W. and Zgoba, K., *Sex Offenders: Recidivism and Collateral Consequences*, NCJRS, U.S. Dep't of Justice (2012).

[53] New York State Division of Probation and Correction Alternatives (DPCA) Research Bulletin: Sex Offender Populations, Recidivism, and Actuarial Assessment, p. 3 (2007)(Of 19,458 male sex offenders on the 48% were arrested for a new offense within eight years, but only 8% were arrested for a new sex offense); Tewksbury, R., Jennings, W. and Zgoba, K., *Sex Offenders: Recidivism and Collateral Consequences*, NCJRS, U.S. Dep't of Justice, p.10-11 (2012)(evaluating the efficacy of New Jersey's sex offender registry, SORN, and finding that SORN status

"was not a significant predictor of which sex offenders would reoffend in general, including non-sexual recidivism.") Zgoba, K. M., Miner, M., Levenson, J., Knight, R., Letourneau, E., & Thornton, D. (2015). The Adam Walsh Act: An examination of sex offender risk and classification systems using data from four states. *Sexual Abuse: A Journal of Research and Treatment*. doi: 10.1177/1079063215569543

[54] *Sex Offender Sentencing in Washington State: Notification Levels and Recidivism*, Washington State Institute for Public Policy (December 2005) (Washington revised tool after discovering that it did not "classify sex offenders into groups that accurately reflect[ed] their risk for reoffending.")

[55] Zgoba, et al, *A Multi-State Recidivism Study Using Static-99R and Static-2002 Risk Scores and Tier Guidelines from the Adam Walsh Act*, NCJRS, United States Department of Justice pp. 8-10 (2012).

[56] Babchishin, K. M., & Hanson, R. K. (2009). Improving our talk: Moving beyond the "low", "moderate", and "high" typology of risk communication. Crime Scene, 16(1), 11-14. This presents an opportunity for the MTC to provide information about the success of its treatment model with an assessment of recidivism rates of individuals who have been found no longer sexually dangerous and been released from the treatment center.